MS. DELPH: I'm objecting to the speculative nature of the witness' statement when he said it looked like he was going to run.

THE COURT: All right. That part of the answer will be stricken and sustained.

Ask your next question.

MR. SHEAFFER: Q. When you were speaking with him outside the store and said "just give it back –"

A. Um-hum.

Q. – was that before or after the security guards got involved?

A. That was before.

Q. Okay.

And what did the defendant do when you made that statement?

A. He went to pull it out and he moved forward like he was going to run, you know.

Q. He leaned forward?

A. Yeah. He was gonna like run for it, you know.

Q. You said he went to pull it out?

A. Uh-huh.

Q. Did you see what he pulled out?

A. There was a steering wheel alarm you put on the steering wheels.

Q. What did he do with that item when he pulled it out?

A. He didn't take it all the way out, he just took it half out and he went to run. And then he started wrestling on the ground.

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Q. Did he do that?

A. No, he didn't.

Q. What happened?

A. He – he kept refusing.

And then we finally said, "If you have anything, to just hand it over and just walk away."

Q. Did he hand something over?

A. A few moments later.

Q. What did he do?

A. He handed us a car alarm. It's a Swat Car Alarm.

Q. Did you see where he got that from?

A. From the left side of his jacket, the left inside of his jacket.

Q. He was wearing a jacket?

A. Yes, he was.

Q. What happened when he gave you the alarm?

A. When he gave it to us, he didn't just hand it to us. He put like both hands up. And he tried to lunge forward trying to push us out of the way to run or to just push us.

Q. I'm sorry, could you step down here, please?

A. Yes.

Q. I'd like you to demonstrate to the jury what he did. You be him and I'll be you.

A. He put the merchandise out and he point forward like that to give it to us.

MR. SHEAFFER: Indicating both hands coming forward at about shoulder level directly towards my chest, Your Honor.

THE COURT: Yes.

MR. SHEAFFER: Q. What did you do?

A. I was outside. I asked my supervisor that was there.

Q. Okay.

In the demonstration you just made, that was directed toward your supervisor?

A. Yes.

Q. What did you do?

A. Well, at that time they both grabbed hands and – but they just struggled. And I just basically, just to get him down on the ground.

Q. Okay. Thank you.

Have a seat.

So you took him to the ground?

A. Actually, we both did.

Q. Did you recover the car alarm?

A. Yes, we did.

Q. What did you do with it?

A. We gave it to Daniel.

Q. And did you see where he went with it?

A. He went inside the store. I didn't really recall. I wasn't focused on him.

Q. You were focused on the defendant?

A. Yes.

Q. Do you recall whether or not the store alarm went off again when Danny went back in the store?

A. I don't recall. I don't recall.

Q. Why is that?

A. I was about 30 feet away from the door on the side by – behind a car.

Q. Was something occupying your attention?

A. I'm on the ground.

Q. Was something occupying your attention?

A. Yes.

Q. What?

A. The struggle with the defendant.

Q. Did he continue to struggle after you took him there?

A. Yes.

Q. Were you able to gain control over him?

A. Yes, we were.

Q. What did you do after you got control of him?

A. We put cuffs on him and we walked him back into the store.

Q. Were the police called?

A. Yes, they were.

Q. Do you recognize the gentleman seated here at counsel table wearing – the man that I have my hands on his shoulder?

A. I believe he was the officer that arrived.

Q. Okay.

When he got there, when the police arrived, were they in uniform or plain clothes?

A. They were in uniform.

Q. And did one of the officers come in the store?

A. Yes.

Q. And did he go with you to a location where you had the defendant?

A. Yes.

Q. And where was that?

A. In the office in Walgreen's.

Q. Okay.

Were any photographs taken back in that office?

A. Yes.

Q. Who took them?

A. Huh.

Q. Who took them?

A. I did.

Q. Why?

A. For store records.

Q. What did you take photographs of?

A. Of the merchandise and of the subject of Mr. Brown.

Q. What kind of camera did you use?

A. It was a Polaroid.

Q. Okay.

Do you recall how many photos you took?

A. I believe I took three. One was blurred, and then we took another one of the merchandise, which is clear, and then the one of Mr. Brown.

Q. Okay.

I have three photographs, they're Polaroids, and they've been marked on the back with orange stickers. I'm going to show you the one marked orange sticker with the No. 1 on it, People's Exhibit No. 1.

Would you look at that?

A. Yes.

Q. Would you look at the photograph, please?

What does it depict?

A. What?

Q. What's shown in that photograph?

A. Mr. Brown.

Q. Who took that photograph?

A. I did.

Q. And does that photograph accurately show the way Mr. Brown looked when you took the photo?

A. Yes.

Q. Okay.

Photograph with the orange sticker on the back, No. 2, People's Exhibit No. 2, do you recognize what's shown in this photograph?

A. Yes.

Q. What is shown?

A. This is the merchandise he had took from the store, swat alarm.

Q. Is that the merchandise you saw handed or thrust towards your supervisor?

A. Yes.

Q. Who took this photograph?

A. I did.

Q. And does it accurately reflect the way the

merchandise looked when you took the photo?

A. Yes.

Q. One final photograph marked on the back with an orange sticker with a No. 3 on it, People's Exhibit No. 3.

What's depicted in this photograph?

A. The price of the misdemeanor.

Q. Okay.

And is that the same item –

A. Yes, it is.

Q. That's depicted in No. 2?

A. Yes, it is.

Q. Who took this photo?

A. I did.

Q. And does the photo accurately depict the way the merchandise looked when you photographed it?

A. Yes.

Q. Now, you said you thought one of the photographs was blurry at the time you took it?

A. Yes.

Q. Which one of the photos was it?

A. This one.

Q. Reflecting No. 3?

A. Yes.

Q. Now, in this photo now, there's a red circle around that price sticker; is that correct?

A. Yes.

Q. That red circle wasn't on the item when you photographed it, was it?

A. No, it wasn't.

Q. Okay.

MR. SHEAFFER: I have no further questions. Thank you, Your Honor.

THE COURT: Cross-examination?

CROSS-EXAMINATION BY:

MS. DELPH: Q. Mr. Perez, after this incident

was over, did you talk to Mr. Lozano about what had happened –

A. I believe so.

Q. – that night?

A. Yes.

Q. Did you talk to him after the incident occurred about the – about what happened?

A. Like a time later?

Q. Um-hum.

A. No.

Q. So you talked to him about that it that night?

A. Yes.

Q. Have you ever talked about it since the night of the incident?

A. No.

Q. Do you still work at Walgreen's sometimes?

A. No.

Q. Okay.

So – so on the night of this incident, you were the only one that had been working there, but your supervisor was there just talking to you?

A. Yes.

Q. Okay.

Now, when you talked to Mr. Lozano about what happened, did he refresh your recollection in any way or fill in the blanks for you?

MR. SHEAFFER: Objection, vague as to time.

THE COURT: Compound. Vague. Sustained.

MS. DELPH: Excuse me. I'm sorry. Let me rephrase it.

Q. On the night that you spoke to Mr. Lozano about the incident, did you – did he tell you information that you hadn't witnessed?

A. He just said he walked past the registers without making a purchase.

Q. Okay.

A. And then the alarm went off and that's when everything happened.

Q. And that's the extent of your conversation about it?

A. That's as far as I recall, yes.

Q. Okay.

Did you see Mr. Brown go inside the store?

A. No, I didn't.

Q. Okay.

Now, when – do you recall where you were standing when you first saw Mr. Brown as he came out this door?

A. Yes, I was at the exit door.

Q. Oh, so you were standing right at the door?

A. Yeah, on the outside, actually.

Q. Okay.

Now, the exit doors, is there anything that triggers them to open, or do you have to manually open them?

A. There's like a sensor.

Q. Okay.

So you just walk up to them and they'll open automatically?

A. Yes.

Q. All right.

Did you hear whether or not the alarm went off before Mr. Brown exited the store?

A. Yes.

Q. Okay.

But the doors were closed?

A. They open up as you approach the alarm.

Q. Oh, I see. Okay.

Now, and you were standing just outside of the doors?

A. Yes, just – if you're walking out, I was just outside on the left.

Q. Alrighty.

Was Mr. Brown running?

A. No, he wasn't.

Q. All right.

And at that point you detained him, how did you do that?

A. Well, we – well, it was a struggle down. And then once we got him down, we just had to get him into some kind of control hold, you know, just to put his hands behind his back, then –

Q. You testified on direct that initially when you had contact with him with your boss, right, that Mr. Brown attempted to hand something to your boss?

A. My supervisor, yes.

Q. Your supervisor.

Where were you standing when this occurred?

A. Just to the – to the left of Mr. Brown, I believe it was.

Q. Where was Mr. Brown standing in – as it relates to the front door of the store; do you recall?

A. He was standing in – in front of the entrance door at that time. We kind of moved. He moved.

Q. Okay.

So if I'm – there's only one entrance and exit door, right?

A. Right.

Q. And they're located right next to each other?

A. Yes.

Q. If I'm standing and I'm facing the entrance and the exit door, is the entrance door to the right of this security alarm or to the left?

A. Well, there's an alarm –

MR. SHEAFFER: Objection, assumes facts not in evidence.

THE COURT: No. Overruled.

THE WITNESS: There's an alarm on both doors.

MS. DELPH: Q. Okay. So let me ask it again. Is the entrance door to the right of the exit door?

A. Yes.

Q. Okay.

So when you contacted Mr. Brown initially with your supervisor, he was to the right by the entrance door?

A. Yes.

Q. Do you recall, did you or your supervisor say something to Mr. Brown to get – to get him to take something out of his jacket?

A. Yes.

Q. Okay.

And what was that, do you remember?

A. Oh, we asked him to pass the doors. He refused. And then we finally said, "Well, if you have anything, just to give it to us and just walk away."

Q. Okay.

So you said, "If you have anything" –

A. Yes.

Q. – and at that point he –

A. Yes.

Q. Okay.

And was the item that's depicted in the photograph, was that – did that remain on Mr. Brown's person anywhere after the – after you and your supervisor confronted him initially?

Do you understand what I'm saying?

A. No, I don't.

Q. In other words – then Mr. Brown left, right, and you had to chase after him?

A. No. No.

Q. I'm sorry?

A. I said he handed it to us and I said he lunged forward as if he was going to push us or just push it out of the way just to run away.

Q. But he had the item in his hand?

A. Yes.

Q. What happened to the item?

A. We grabbed it and then gave it to Daniel.

Q. Okay.

So you and your – who grabbed it?

A. My supervisor.

Q. And then your supervisor gave it to Danny?

A. Yes.

Q. And then you chased Mr. Brown?

A. There was no chase.

Q. Okay.

You – you had to put him down on the ground?

A. Yes.

Q. Okay.

After he gave the item –

A. After he gave us the merchandise, he had both hands up as if he was going to push us or break through us. And at that time, both arms locked between my supervisor and him.

Q. Okay.

A. And then –

Q. Go on. I'm sorry, I didn't mean to interrupt.

A. And then it was just a struggle, basically.

Q. Okay.

So Mr. Brown didn't push anybody. You just thought he was going to?

A. Yes.

Q. All right.

Now, before the pushing or before the motion that you thought was going to be pushing, did Mr. Brown – did he get agitated?

A. I don't recall.

Q. Did he ask you for your badge number or your name or he wanted to know who your supervisor was?

A. Not that I recall, no.

Q. Okay.

Do you recall having a conversation with him at all?

A. Afterwards.

Q. Okay.

Did he – is that the time that he asked for your badge number and some information from you?

A. He originally asked for my name and who I was.

Q. Okay.

Afterwards?

A. Yes.

Q. All right.

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